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The late Earl of LINDSEY his Title, by which himself, and his Participants do claim 24000. Acres of Land in the Fenues in *Lincolne-shire*; and concerning which, a Bill is now with the House of Commons to empower Sir *William Killigrew*, and Sir *Henry Heron*, to perfect their Undertakings. The which, if it hath not been according to the particulars contained in this Paper, the countenance of any Member of this House, is in no sort desired hereunto.



First, We claime by the Law, and Authority of several Decrees of Sewers.

Secondly, We claim the same Equity that former Parliaments have afforded to such Undertakings, we having in this expended near 80000. l. to the very great benefit of this Kingdom.

That Commissions of Sewers were anciently part of the Commission of *Oyer and Terminer*. Reg. 1272

That they were issuable at the Kings pleasure, and that the King (as he who had the Supream care of things of publick concernment) was bound to grant such Commissions upon all emergences.

That this was the constant opinion, we find in our Antientest Book of Common Law: That it was a constant practice, we find many such Commissions issued, two especially, long bfore any Statutes now known in *England* were made; they were both sent into *Lincolne-shire*, and the first into the very parts where the Earl made his Works, and at that time to have done this very Work that the Earl hath now done. Ca. Rep. 10.
141.
In the Reg.
1276.

But because those Commissioners were temporary, to persons sometimes strangers in the place, and ordinarily in redresse of milchiefs already happened by some former inundation, some Statutes have from time to time enlarged the power of Commissions to act as well in prevention, as redresse; and appointed those Commissions to Gentlemen, living on, or near the place, who by their timely notice might prevent, and their Authorities were made constant for certain number of Years. F. N. B. 113.
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The first Statute to this purpose we find in *Henry* the third his time, which is as ancient as any Statute now known in *England*; very many subsequent Statutes have enlarged their powers in such particulars as in experience they found necessary, viz. to enable them to tax all Lands which might receive benefit or avoid losse: to make new Dreins, if they upon their view and observation found the ancient ones were not sufficient; to distrain, and sell for not payment of those Taxes, or in their discretions, to charge such Lands perpetually, or to sell them for Years, or Lives, in Tayle, or in Fee.

And because the Commissioners were Gentlemen of the Countrey, not ever so intelligent in every scruple of Law, it is by later Statutes provided, That their Decrees shall not be examinable but in Parliament; as divers heretofore have been; but those Parliaments never avoided them, if they found the course taken by their Commissioners, might probably do the work, though it was not yet really done. But on the contrary, rather then lose the benefit that might thereby accrue to the State (although those Commissioners might in some thing have erred in judgement) they did confirm their Decrees, and sometimes better the Contract in behalf of the Undertakers, as they did *Tindalls Law*, *Lovells Law*, &c.

That those Lands undertaken by the Earl of *Lindsey*, were hurtfully surrounded in *Henry* the fifth his time, appears by Presentments at a Session of Sewers at that time.

That the Earl hath pursued the most effectual course in doing the work, appears by Acts of Sewer, at a Session at *Donington* before *Charles Brandon* Duke of *Suffolk*, and many more eminent men in 34. H. 8. who decreed the making of new Dreins in the very same place, and the same Out-Fals to the Sea that the Earl hath done, only the Earl hath made the same, and some more, and much more capacious, and that the Commissioners then laid the Tax generally, as the Commissioners now laid this last, before their Contract with the Earl.

That upon great complaint of the Inhabitants at a Session of Sewers at *Sempringham*, 8. Eliz. before the Earl of *Lincolne* Lord high Admirall of *England*, and many more, a generall Tax was laid for the repairing and enlarging Dreins to carry away waters that in those Fennes then annoyed them.

At another Session 17. Eliz. at *Swinstead*, upon complaint of the Countrey, that they were then more drowned then formerly; the Commissioners then decreed the making such Dreins as the Duke of *Suffolk*, and others had decreed in *Hen.* 8. his time; and such as the Earl hath since made, and they then laid a Tax upon the same Lands; but it was not paid, and so nothing was done.

At *Bourne* in 6. Jac. the Commissioners upon their view of the great inundations that time, laid a generall Tax for doing some works in the said Fennes.

But about the 5. Car. primi, Sir *Anthony Irby*, Serjeant *Callis*, and other Commissioners of Sewers, and of the Peace, then finding all former Attempts fruitlesse; by reason the Inhabitants would never pay the Taxes,

Reg. 227.
23. H. 8. c. 5.
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Taxes, nor the Lands by reason of the Surrounders had no Cattel upon them to render Distresse, and well understanding that the King was bound, as is expressed in the Preamble of all Statutes of Sewers; to give direction to works of this nature and necessity. Those Commissioners, we say, upon those considerations did by their Letters remonstrate to the then King, the necessities and profits of dreining this Land, and beseech'd his Majesty to recommend some person of Honour to contract with them as undertaker; the King was pleased to recommend the Earl of *Lindsey*; however before they made any contract with the Earl, they yet laid another Tax of 13. s. 4. d. per Acre, at a Session at *Sleaford* of 35. Commissioners, many of them Lords and owners, and prime Gentlemen of the Countrey; and after three years expectancy of that & little or none paid; Then 11. *Car. primi*, lest their endeavours should have been as fruitlesse, as formerly, at a publick Session of Sewers, and in a generall Assembly of Lords, Owners and Commoners, where were 32. Commissioners; many Lords and Owners of the said Fennes, after many proposalls and refusals, it was fully agreed, and a perfect contract made with the said Earl, that the said Earl should have as a Reward for dreining all between *Bourn* and *Lincoln*, 24000. Acres, and as soon as he should have finished that part between *Bourn* and *Kime*, &c. he should have 14000. Acres, as a proportionable part for so much to be put into his possession, when by the Commissioners it should be adjudged dreined; and this contract and Decree was confirmed by the Royall assent and inrolled in Chancery.

The Earl applyed himself to the work, and 12. *Car. primi*, at a Session at *Boston*, the Commissioners being 24. apportioned his part out of each particular Fenne.

At a Session at *Bourn* 13. *Car. primi*, 10. Commissioners ascertained the place where his proportion in every Fenne should lye.

This Law was after confirmed 14. *Car. primi* at *Sleaford* by 18. Commissioners, by their Royal assent inrolled in Chancery.

After in the same Year by 19. Commissioners it was viewed intirely upon the place, after at a Session at *Sleaford*, the said Commissioners did decree the possession to the Earl, to which Decree also was the Royal assent inrolled in Chancery.

After which the Earl did enclose it, built and inhabite it, plant, plough, sow and reap near three Years, till about the beginning of the late Troubles, Riotous people violently entred and destroyed his Plantations and Corn, then growing; pulled down his Houses, destroyed the Dreines, and hath ever since held the Possession.

1. By the Records above mentioned, it is evident, that these Fennes in Question, have been for 200. years hurtfully surrounded, and the constant endeavours of that Countrey to have dreined them; but could not effect it, untill the Earl of *Lindsey* did the work.

2. By the Countries letter to the King, it is clear they called for an Undertaker; and by the Earls Reception treaty and Contract, in

three years time, (none dissenting) 'tis clear he was not imposed on them, but kindly invited and received by the Country.

3. By the Country not paying their Tax, of a Marke an Acre in three years time given, though from six months to six months, during that three years treary, they had still new dayes appointed for the said payment; by which 'tis evident, that they did not value these Fenny Lands so much worth in those dayes. Onely the Earl of *Lincoln* did pay in his Tax, as the Commissioners appointed, and he had his 300. Acres for a Marke an Acre when the work was done.

4. It is also evident, that if the Country would have undertook the dreining by levying their Taxes, this undertaking by the Earl had not been: and that no Contract was made, till after 3. years not payment of the Taxes. Note also that the Commission of Sewers then in force, had 213. Commissioners, the prime men of the Country, many of them Lords and Owners; and 78. Commissioners of the same Country, did Act in our decrees, to View, to Tax, to Contract, to Adjudge the work done, and to give possession of 14000. Acres unto the Dreiners, as the decrees shew.

5. When the Contract was made, before the work begun, the Earl declared publicly, that if any of the Lords, Owners, and Commoners, would joyn with him to adventure in the works, they should be admitted for Forty shillings the Acre. But only three would adventure, who were *Sr. John Brook Lord Cobham*, *Sr. Edward Heron*, and *Mr. William Langeion*, who at Forty shillings the Acre became adventurers for their own Fenns only; by which 'tis clear, that if the Lords and Owners had desired to be undertakers, they were not excluded, (as is now pretended) and 'tis as clear, that they did not value those Fenns so much worth before the Undertaking, as they now pretend, or thought the work too hazardous to venture on; but new men do clamour for what their Ancestors did reject, who might have been either Undertakers by paying their Taxes, or Adventurers by joyning with the Earl.

6. By all the Records and Decrees 'tis evident, That all the Commissioners, who were 213. were with the whole Country constantly publicly summoned to appear at every grand Session, from six months to six months; and 'tis as evident, that at every Session a much greater number of Commissioners then needed, did constantly appear and act in this business; though any six Commissioners according to the Law of Sewers, (three being of the Quorum) are impowred to Act, and there being 78. of the said County, many of them Lords and Owners of the said Fenns, which did Act in these Decrees, as the Records do shew, and at every Session for the whole three years Treaty, many Thousands of the Commoners were continually present; and in all these three years time, while the Contract was treating, nor at the Contract making, did any one Lord, Owner, or Commoner, either desire to be Dreiner, or to oppose the Dreining, or the Undertakers; but many



many Thousands at the making of the Contract at *Sleaford*, did with great Joy and lowd Cryes, attend the Earl to his lodgings; No one man dissenting of the 32. Commissioners then present, as in the Decree of Sewers is expressed. This we conceive does clearly prove, that the Earl had the unanimous consent of the whole Countrey, whatsoever now is alleadged to the contrary; the Countries kind compliance and joyfull invitations did encourage the Dreyners to adventure on the work.

7. We humbly conceive, that the Earl of *Lindsey*, the Earl of *Lincolne*, the Lord *Cobham*, Sr. *Edward Heron*, and Mr. *Langton*, to be persons of as great quality, and estates; and as great Lords of Fenns there, and so may as well be called the Countrey, as those who now pretend to be Dreyners on that account. But they say these were parties and Judges, and so would make it a crime, for any that had estates in that Country to be Dreyners in those dayes; but would now themselves do what they condemne in others; and themselves hope by the merit of abetting those Riotters who destroyed those publique workes, now to be preferred to the undertaking, and enjoy the Dreyners Lands, which we have and shall pay fifty years purchase for when our work are repaired.

8. Tis also evident by the Decrees, and by the Dreyners great Houses built and their 14000. acres being divided, planted, plowed, sowed, and reaped, for near three years together, that the Dreyners were in possession, and their undertaking fully performed according to their Contract. It also is as evident by the Dreyners houses being pulled down, with their Plantations, Corne, and publique workes destroyed, that the Dreyners were thrown out by a Riot; which Riotters and their Abbettors, have now held the Dreyners Land above Twenty years.

9. Since his Majesties Restauration, the Dreyners Bill hath twice passed the Lords House, and been sent down to this Honourable House, and there twice Committed, and the businesse been fully heard; and at the last Session of this Parliament, after a full hearing at your Committee, it was Reported back to the House by St. *Thomas Meres* (Chairman) where the businesse was again (at St. *Charles Hussy's* desire) Debated at the Barre, and after Counsel fully heard on both sides, It was Resolved by the House, to proceed upon the Dreiners Bill, and did proceed on some of the Amendments, but for want of time the Parliament prorogued before it could be finished.

10. St. *Charles Hussy* (who hath not proved himself more then a Commoner, and we beleive cannot) put in a Bill in the name of the Lords and Owners, whose consents he hath not.

11. The Dreiners do not claime by Court or prerogative power, to have got an Interest in the Fenns in question (as is scandalously alleadged) but do claime their Title, by the known Laws of Sewers, according to the ancient and daily practice, of 200. years, as their Records and Decrees do shew, with the Royal Assent Enrolled in Chancery; and do justify, that all their proceedings were from first to last, according to the

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best works of this Nation , which have so much enriched the Kingdome.

12. By the dates of the Deeds of those three above named Commissioners, it is clear they became adventurers some years after the Contract , and so not subject to that scandal of being parties and Judges, but were as free to adventure in that work, as for any member of this Honourable House to purchase Land after an Act is passed for the sale thereof.

13. But if the experience of our dayes, do now think to amend the Commission of Sewers : let it be amended.

Or if not clearly understood : let it be better explained.

Or if it be found of no use for the good of the Nation : let it be Repealed.

But while it is in force and in practice, let not the Dreiners be destroyed, for observing and following the direction thereof as it is in daily practice throughout *England* , and so great improvements made thereby ; For by a moderate Computation, the Fens of *England* are near as much ground , as *Holland* , *Zealand* , and half *Freezland* , and as rich a Soyle , by which it may be judged whether the dreinings ought to be encouraged, and the Commission approved:

14. Our Adversaries cry out that their propriety is invaded by these dreinings, and at the same time put in a Bill to do the same thing by the same way ; The Country (as they have said) needed no dreining, though 200. years Records declare the contrary ; and yet themselves would be the Dreiners. They forget that the Riot, which destroyed above a hundred Thousand pounds worth of Houses, Goods and Come , and ruined works, which does destroy all propriety , and roots up the Foundation of all Laws and Government. They make a publique Contract in the Face of the Country after three years publique Treaty , with the unanimous consent of 32. Commissioners, as is in that Decree expressed, most of them the most eminent Lords and Owners, and in presence of Seven or Eight Thousand Commoners , with all their joyfull consents ; and after Eighty Thousand pounds expended by the dreyners , their Justice allows them to Ravish from us these Lands, and to keep them above 20. years. It seems very strange, that poor men are daily hanged for trifling Robberies , to save their families from starving , and so great a Robbery as our Riot , to passe for a virtue , to be justified , endeavour to be rewarded instead of punished : and all the Argument for this is , that (they say) it is their own Land : and their houses builded with the ruins of ours is their own too, because they say so ; by which example any man may pull down any mans house , and call it his own. Tis humbly desired that the consequence of this may be fully considered , and then judge who be the destroyers of all mens propriety ; when the will and pleasure of a multitude may overthrow the decrees of the most ancient Court of Record in *England* : for such is the Commission of Sewers , and as beneficial to the Nation as any. If that Riot had been duely punished , this contest had ended many years since ; but by that omission , men are encouraged to design any

any thing that has no relish of Justice; else no man could hope to be Dreiners of our Lands which we have paid so dear for and so well deserved of the Nation, That we most humbly desire such Reparation as this House in their Wisedomes shall think fit, the better to enable us to Repair our ruined works.

15. The Dreiners do humbly desire that their merit may be duly considered, and the Rioters have their reward, lest by their example no man may be assured of any propriety; when multitudes shall be justified for such an eminent Riot, committed while the businesse were in hearing before a Committee of the House of Commons, and when two Justices of Peace was present, who read the Orders of both Houses, and commanded that Rout to disperse, but could not prevail, but before their faces saw a House of 3000. *l.* price pulled down. This well considered, is a high concern to the Honour of Parliaments, and to the publick peace of the Nation, as well as to every man's Interest in *England*, besides the Dreiners, who are much impoverished by this Riot, their Estates above twenty Years detained, their works so ruined, as will cost twenty five thousand pounds to repair; and thus all men discouraged from such publick works, which deserve a better approbation then to be neglected now, or formerly destroyed by the Rioters.

16. 'Tis said by some, that we had not the Countreys consent. The Commission of Sewers does not direct, that every individual man should consent under their hands, neither is any consent requisite, nor directed by the Commission, for that were an impossible work; for if any two or three froward men by their refusal may hinder the enriching of the Nation, it would make fruitlesse the whole intention of the Commission, which is not like the common Law in other cases; but common sense and constant practice shews that a tacite compliance in them absent without any dissenting, does declare a generall consenting with those many Thousands, who for three Years treating were constantly present, and with joyfull acclamations consented to the Contract made at *Sleaford*.

17. Such a Consent as our Adverlaries talk of, is as impossible as their discourse of Dreining, without making new works; as if our Ancestors were so silly, by so many Acts of Parliaments to empower the Commissioners to Drein, and to forbid the only way of Dreining. But this is like their beating us out of the Countrey, destroying our works, and now complaining to the Parliament that we did not perform our contract, by not finishing our works in the second Level, when their Riot drove us away; and all they say to amuse men is like these when we answer them, as those who now signe Papers against the Dreiners, are the same men or their Abettors, who pulled down our Houses, and destroyed our works, and such as now hold our Estates by Vertue of that Riot; 'tis to be supposed such men will signe any thing.

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1663 Apr 28

The Dreiners do declare, That the Propofals and Resolves of the Committee the 4th. of *April*, 1662. shall be by them inviolably performed, according to their Consents and Compliance therein; as to remit the dreining of the second or upper Level, from *Kime Ea* to *Lincoln*, unto the Lords and Owners as they desired and we did agree unto, (our 14000. Acres being first settled to us) and they paying us for such works of ours as they make use of. And also the Dreiners will perform that agreement with Mr. *Dymock*, as it is settled.

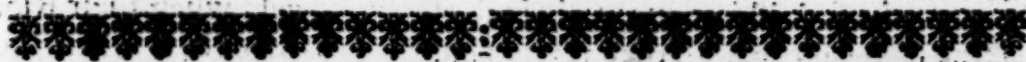
The 28. of *April*.
1663.



W. Killigrew,
Henry Heron.



F I N I S



1663 April 28